

# Exhibit B

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**From:** Powers, James R. (CIV) <James.R.Powers@usdoj.gov>  
**Sent:** Thursday, October 5, 2023 12:11 PM  
**To:** Zorn, Matt; Rodriguez, Jimmy (USATXS); Pennington, Shane A.  
**Cc:** Richey, Samantha  
**Subject:** RE: Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations  
**Attachments:** Zorn (FOIA)\_ Motion for Leave to File Amended Complaint(1140935.1)\_DOJ.docx

Hi Matt – the redlined complaint, with the change you note about fn 12, looks good to go. On the motion, I have a couple of suggested nits in the attached for your consideration. The addition of “revised” is to make clearer that our change of position from opposition to consent is based on a revision to the proposed amendment, and that we are not consenting to the version of the fourth amended complaint already on file.

If this works for you, feel free to file when convenient.

Thanks  
Jim

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**From:** Zorn, Matt <mzorn@yettercoleman.com>  
**Sent:** Wednesday, October 04, 2023 1:29 PM  
**To:** Powers, James R. (CIV) <James.R.Powers@usdoj.gov>; Rodriguez, Jimmy (USATXS) <jrodriguez3@usa.doj.gov>; Pennington, Shane A. <SPennington@porterwright.com>  
**Cc:** Richey, Samantha <srichey@yettercoleman.com>  
**Subject:** [EXTERNAL] RE: Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations

Jim,  
Please see the attached redline with one caveat: [REDACTED]  
Isn't necessary but the redline was run on a slightly earlier draft.  
I'm also attaching a substitute motion for your review. I'm happy to change language to accurately reflect our positions to the extent necessary.  
Matt

**Matthew Zorn | Partner | Yetter Coleman LLP**  
811 Main Street, Suite 4100, Houston, Texas 77002  
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**From:** Powers, James R. (CIV) <[James.R.Powers@usdoj.gov](mailto:James.R.Powers@usdoj.gov)>  
**Sent:** Wednesday, October 4, 2023 9:29 AM  
**To:** Zorn, Matt <[mzorn@yettercoleman.com](mailto:mzorn@yettercoleman.com)>; Rodriguez, Jimmy (USATXS) <[Jimmy.Rodriguez2@usdoj.gov](mailto:Jimmy.Rodriguez2@usdoj.gov)>; Pennington, Shane A. <[SPennington@porterwright.com](mailto:SPennington@porterwright.com)>  
**Subject:** RE: Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations

Matt – feel free to say the request for status conference is jointly made. As for scheduling, our only other constraint in the immediate term is 10/16 (I will be out of office that day).

Jim

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**From:** Zorn, Matt <[mzorn@yettercoleman.com](mailto:mzorn@yettercoleman.com)>

**Sent:** Tuesday, October 03, 2023 6:00 PM

**To:** Powers, James R. (CIV) <[James.R.Powers@usdoj.gov](mailto:James.R.Powers@usdoj.gov)>; Rodriguez, Jimmy (USATXS) <[jrodriguez3@usa.doj.gov](mailto:jrodriguez3@usa.doj.gov)>; Pennington, Shane A. <[SPennington@porterwright.com](mailto:SPennington@porterwright.com)>

**Subject:** [EXTERNAL] RE: Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations

Jim,  
We're agreed on all accounts and thank you for streamlining. I will send you a redline tomorrow morning. I'm also fine with handling the MTD as you propose, by requesting a conference with the court. I can do both in my substituted motion, but I would also like to note that the request for a status conference is jointly made. As far as conflicts are concerned, I am tied up Oct 18-20.  
Best regards,  
Matt

**Matthew Zorn | Partner | Yetter Coleman LLP**

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**From:** Powers, James R. (CIV) <[James.R.Powers@usdoj.gov](mailto:James.R.Powers@usdoj.gov)>

**Sent:** Tuesday, October 3, 2023 2:23 PM

**To:** Zorn, Matt <[mzorn@yettercoleman.com](mailto:mzorn@yettercoleman.com)>; Rodriguez, Jimmy (USATXS) <[Jimmy.Rodriguez2@usdoj.gov](mailto:Jimmy.Rodriguez2@usdoj.gov)>; Pennington, Shane A. <[SPennington@porterwright.com](mailto:SPennington@porterwright.com)>

**Subject:** RE: Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations

Hi Matt – We agree in principle to consent to amendment if you drop the new claims added in the proposed fourth amended complaint. A couple of conditions on the consent.

- (1) Please send a redline draft of the new proposed amended complaint just so we can confirm specifically the version that we would be consenting to.
- (2) Amendment of the complaint raises questions about how to proceed on the pending motions, particularly the MTD. We think the best way to handle those is to concurrently request a conference with the court to discuss the status of the pending motions and further proceedings. We'd ask that you seek such a status conference as part of the substitute motion for leave to amend. Alternatively, we could jointly move for a status conference in parallel to the substitute motion for leave to amend.

Let me know your thoughts on these.

Thanks,  
Jim

---

**From:** Zorn, Matt <[mzorn@yettercoleman.com](mailto:mzorn@yettercoleman.com)>

**Sent:** Monday, October 02, 2023 10:15 AM

**To:** Powers, James R. (CIV) <[James.R.Powers@usdoj.gov](mailto:James.R.Powers@usdoj.gov)>; Rodriguez, Jimmy (USATXS) <[jrodriguez3@usa.doj.gov](mailto:jrodriguez3@usa.doj.gov)>; Pennington, Shane A. <[SPennington@porterwright.com](mailto:SPennington@porterwright.com)>

**Subject:** [EXTERNAL] RE: Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations

Thanks Jim. My offer still stands: I'll drop the new claims without prejudice if the Government drops its opposition.

**Matthew Zorn | Partner | Yetter Coleman LLP**

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**From:** Powers, James R. (CIV) <[James.R.Powers@usdoj.gov](mailto:James.R.Powers@usdoj.gov)>  
**Sent:** Monday, October 2, 2023 9:11 AM  
**To:** Zorn, Matt <[mzorn@yettercoleman.com](mailto:mzorn@yettercoleman.com)>; Rodriguez, Jimmy (USATXS) <[Jimmy.Rodriguez2@usdoj.gov](mailto:Jimmy.Rodriguez2@usdoj.gov)>; Pennington, Shane A. <[SPennington@porterwright.com](mailto:SPennington@porterwright.com)>  
**Subject:** RE: Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations

Hi Matt – as I’m sure you saw in the news, appropriations were passed over the weekend. We will not be pursuing any stay motion.

Thanks,  
Jim

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**From:** Zorn, Matt <[mzorn@yettercoleman.com](mailto:mzorn@yettercoleman.com)>  
**Sent:** Friday, September 29, 2023 4:39 PM  
**To:** Rodriguez, Jimmy (USATXS) <[jrodriguez3@usa.doj.gov](mailto:jrodriguez3@usa.doj.gov)>; Powers, James R. (CIV) <[James.R.Powers@usdoj.gov](mailto:James.R.Powers@usdoj.gov)>; Pennington, Shane A. <[SPennington@porterwright.com](mailto:SPennington@porterwright.com)>  
**Subject:** [EXTERNAL] RE: Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations

Understood. I just got off the phone with Jim. Right now, I’m opposed to what amounts to a de facto stay but will get a definitive answer to you on Monday. Consistent with our prior discussion, I asked to see if DOJ will drop its opposition on leave to amend if I dropped the new claims. It is my strong preference to streamline this case so that all issues can be resolved on the merits. If that means foregoing meritorious claims so my motion will be unopposed, I will do that.

**Matthew Zorn | Partner | Yetter Coleman LLP**

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**From:** Rodriguez, Jimmy (USATXS) <[Jimmy.Rodriguez2@usdoj.gov](mailto:Jimmy.Rodriguez2@usdoj.gov)>  
**Sent:** Friday, September 29, 2023 3:29 PM  
**To:** Powers, James R. (CIV) <[James.R.Powers@usdoj.gov](mailto:James.R.Powers@usdoj.gov)>; Zorn, Matt <[mzorn@yettercoleman.com](mailto:mzorn@yettercoleman.com)>; Pennington, Shane A. <[SPennington@porterwright.com](mailto:SPennington@porterwright.com)>  
**Subject:** Re: Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations

To add to this, criminal DOJ attorneys are allowed to continue working (without pay) but civil attorneys are generally furloughed

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**From:** Powers, James R. (CIV) <[James.R.Powers@usdoj.gov](mailto:James.R.Powers@usdoj.gov)>  
**Sent:** Friday, September 29, 2023 3:26 PM  
**To:** Zorn, Matt <[mzorn@yettercoleman.com](mailto:mzorn@yettercoleman.com)>; Pennington, Shane A. <[SPennington@porterwright.com](mailto:SPennington@porterwright.com)>  
**Cc:** Rodriguez, Jimmy (USATXS) <[jrodriguez3@usa.doj.gov](mailto:jrodriguez3@usa.doj.gov)>  
**Subject:** RE: Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations

Absent an appropriation, DOJ attorneys are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 USC 1342.

Given that, we will need to request a stay of the deadline set for next week in this case for the period that appropriations for DOJ lapse. If you'd still like to discuss, please give me a call – 202-353-0543.

Thanks,  
Jim

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**From:** Zorn, Matt <[mzorn@yettercoleman.com](mailto:mzorn@yettercoleman.com)>

**Sent:** Friday, September 29, 2023 4:13 PM

**To:** Powers, James R. (CIV) <[James.R.Powers@usdoj.gov](mailto:James.R.Powers@usdoj.gov)>; Pennington, Shane A. <[SPennington@porterwright.com](mailto:SPennington@porterwright.com)>

**Cc:** Rodriguez, Jimmy (USATXS) <[jrodriguez3@usa.doj.gov](mailto:jrodriguez3@usa.doj.gov)>

**Subject:** [EXTERNAL] Re: Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations

I would like to confer to better understand.

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**From:** Powers, James R. (CIV) <[James.R.Powers@usdoj.gov](mailto:James.R.Powers@usdoj.gov)>

**Sent:** Friday, September 29, 2023 3:11:03 PM

**To:** Zorn, Matt <[mzorn@yettercoleman.com](mailto:mzorn@yettercoleman.com)>; Pennington, Shane A. <[SPennington@porterwright.com](mailto:SPennington@porterwright.com)>

**Cc:** Rodriguez, Jimmy (USATXS) <[Jimmy.Rodriguez2@usdoj.gov](mailto:Jimmy.Rodriguez2@usdoj.gov)>

**Subject:** Zorn v. DOJ (SD Tex) - motion to stay in the event of a lapse in appropriations

Matt and Shane – in the event that appropriations to the Department of Justice lapse this weekend, I will need to file a motion to stay our response to Dkt No. 78, your motion for leave to file a fourth amended complaint. The stay request would be for the duration of any lapse in appropriations with a request for an extension to the deadline commensurate with the duration of the lapse. Please let us know your position on the motion by noon Monday (which again, I will only be filing if a lapse in fact occurs and is ongoing as of Monday morning).

Thanks,  
Jim

**James R. Powers**

Trial Attorney

Federal Programs Branch

U.S. Department of Justice, Civil Division

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MATTHEW C. ZORN,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE, ET  
AL.

Defendants.

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Civil Action No. 4:22-cv-02396

**ZORN'S UNOPPOSED SUBSTITUTED MOTION FOR LEAVE TO FILE A  
FOURTH SUPPLEMENTAL AND AMENDED COMPLAINT AND REQUEST FOR  
STATUS CONFERENCE**

Since the filing of Plaintiff's motion for leave to file a Fourth Amended Complaint, the parties have further discussed the matters presented therein. The parties have reached agreement, and the Government has consented to the filing of [a revised](#) ~~the~~ Fourth Amended Complaint, which is attached to this motion as Exhibit A. *See* Fed. R. Civ. P. 15(a)(2) (permitting amendment based on the written consent of a party). *See also* Ex. B (Government consent).

The parties likewise agree that amendment of the complaint raises questions about how to proceed on pending motions, particularly the pending motions ~~s~~ to dismiss, which are directed at earlier pleadings. The parties agree and respectfully request a status conference to discuss the pending motions and further proceedings.

For the reasons stated above, Plaintiff requests the Court grant leave to file the Fourth Amended Complaint and set a status conference to discuss resolution of the pending motions.

Dated: October 3, 2023

Respectfully submitted,

/s/ Matthew C. Zorn

Matthew C. Zorn

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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Matthew C. Zorn  
Matthew C. Zorn

**CERTIFICATE OF CONFERENCE**

I conferred with the Government on September 12, 2023. Currently, it is opposed.

/s/ Matthew C. Zorn  
Matthew C. Zorn

**WORDS**

I certify that this filing has 2,299 words, excluding the case caption, signature block, and certificates.

/s/ Matthew C. Zorn  
Matthew C. Zorn